P.B.

Memorandum

of Laws Affecting the Members of the Mennonite Religious Society and Military Service in Canada

MEMORANDUM OF LAWS AFFECTING THE MEMBERS OF THE MENNONITE RELIGIOUS SOCIETY AND MILITARY SERVICE IN CANADA.

As requested, a search was made of the various Statutes formerly in force in Canada and in Upper Canada prior to Confederation (1867), which affect or refer to that body and military service and obligation.

Apparently there is no Statute of the Imperial (British) Parliament in connection with such matters, so far as the books at Osgoode Hall and Legislative Libraries at Toronto show. In one volume, which was published by the Government at the time, and which purports to contain all statutes and laws of the British Parliament, of Quebec and the subsequent Province of Upper Canada (and including all Ordinances having the force of law), from 1716 to 1820, appears the first statute in which mention is made of the Mennonites and Tunkers, such Statute being one of George III, passed in 1808.

The following extracts from the various Acts from time to time in force will show the history of such legislation and the existing law now in effect.

1808—48 Geo. III, Chapter 1, being "An Act to explain, amend and reduce to one Act the several Laws now in being for the raising and training the Militia of this Province."

Section 11.—That every male inhabitant from sixteen years of age to sixty shall be deemed capable of bearing arms, and shall enroll his name as a militia man on the first day of training, Etc.

Section 27.—Be it further enacted by the authorities aforesaid, that the persons called Quakers, Mennonists and Tunkers, who from certain scruples of conscience decline bearing arms, shall not be compelled to serve in the said militia, but every person professing that he is one of the people called Quakers, Mennonists or Tunkers, and producing a certificate of his being a Quaker, Mennonist or Tunker, signed by the clerk of the meeting of such society or by any three or more of the people called Quakers, Mennonists or Tunkers, shall be excused and exempted from serving in the said militia; provided, nevertheless, that every such person or persons that shall or may be of the people

called Quaners, Mennonists or Tunkers, from the age of sixteen to sixty shall on or before the first day of December in each and every year give his name and place of residence to the Treasurer of the District where he or they shall reside, and pay to such Treasurer to and for public uses of such District in time of peace the sum of twenty shillings, and in time of actual invasion or insurrection, or when any part of the Militia of that District shall be called out on active service the sum of five pounds, and in default of such payment it shall and may be lawful on information or complaint on oath made by the said Treasurer before any Justice of the Peace of such District for the said Justice to issue his warrant under his hand and seal to levy the same by distress and sale of the offender's goods and chattels, returning so much of the said distress as shall exceed the sum of twenty shillings per annum in time of peace and five pounds per annum in time of actual invasion or insurrection or when any part of the Militia of that District shall be called out on active service, deducting therefrom the charges and all other incidental expenses of such distress and sale, as well as the expenses of summoning such offender before such Justice to answer the said information and complaint, and the said sum so levied by the said Justice, as aforesaid, shall be by him within the space of two calendar months paid into the hands of the Colonel, or in his absence the next senior officer of the regiment, battalion or independent company of the division where the offense has been committed, to be applied for the like purposes as the fines, forfeitures and penalties imposed by this Act, and for want of such distress the Justice before whom such person shall have been convicted shall commit him to the common goal of the district until he shall pay and satisfy such sum together with the reasonable charges incident to such conviction; provided, nevertheless, that no person or persons so convicted shall in any case be detained in custody longer than the space of one calendar month; provided also that it is hereby enacted that each and every of the persons usually called Quakers, Menonists and Tunkers that have at-

tained the age of fifty years, shall not be liable to the payment of such sum of twenty shillings for being exempted from serving in the said militia in time of peace, but in time of war or other emergency they shall be liable to serve, or to the payment of five pounds for being exempted for every year, until they shall have attained the age of sixty years.

1809—49 Geo. III., Chapter 6.—Being an Act for the relief of Menonists and Tunkers in certain cases.

Whereas the religious societies of the Menonists and Tunkers from certain scruples of conscience against taking an oath are subject to many inconveniences to themselves and families, as well as to others who may require their evidence; for remedy whereof, be it therefore enacted, Etc. That from the passing of this Act any Menonist or Tunker in any case in which an oath is required by law or upon lawful occasion, wherein the affirmation or declaration of a Quaker will by law be admitted, shall be, and is hereby permitted to make his or her affirmation or declaration in the same manner and form as a Quaker may be by the laws now in force required to do.

Section 3.—And be it further enacted by the authority aforesaid That no Menonist or Tunker shall by virtue of this Act be qualified or permitted to give evidence in any criminal cases or to serve on juries in criminal cases, or to hold or enjoy any office or place in the Government of this Province, anything herein contained to the contrary notwithstanding.

1910.—50 Geo. III., Chapter 11.—Whereas the sons of Menonists and Tunkers who are minors cannot avail themselves of the twenty-seventh clause of (48 Geo. III., Chapter 1), by reason of not being able to obtain the certificate required by the above-mentioned Act, until they shall have obtained the age of twenty-one years, according to the rules and regulations of the said societies, for further remedy wherof; be it enacted (Etc.) That the sons of Menonists and Tunkers liable to serve in the militia, under the age of twenty-one years, shall instead of the certificate required by the above-mentioned Act, produce a certificate, stating his name, that his father is a Menonist or Tunker (as the case may be) and that such minor is brought up and

educated in the principles of the Menonists or Tunkers (as the case may be), which certificate shall be signed by the Clerk of the Meeting of such society, or by three or more of the people called Menonists or Tunkers, such minor shall then be entitled to the benefits and indulgences in said clause mentioned, subject nevertheless to all other restrictions and provisions of the said clause.

1837.—1 Vic., 8, Sec. 50— Being "An Act to amend and reduce into one Act the Militia Laws of this Province (virtually the same as the following):"

1839.—2 Vic., Chap. 9, Sec. 52.—And be it further enacted that the persons called Quakers, Menonists and Tunkers, who from certain scruples of conscience decline to bear arms, shall not be compelled to serve in the said Militia, but every person professing that he is one of the peopel called Quakers, Menonists or Tunkers and producing a certificate of his being a Quaker, Menonist or Tunker, or being the son of a Quaker, Menonist or Tunker, brought up and educated in the principles of the Quakers, Menonists or Tunkers, and under the age of twenty-one years, signed by the Clerk of the Meeting of such Society or by three or more of the people called Quakers, Menonists or Tunkers, shall be excused and exempted from serving in the Militia; Provided nevertheless, that every person who may be so excused as aforesaid shall on or before the first day of June in every year give in his name and place of residence to the Colonel or Officer Commanding the Regiment within the limits of which he may reside, and pay at the same time to the Colonel or Officer commanding, the sum of twenty shillings currency, and in time of actual invasion, insurrection or rebellion, when any portion of the Militia are called upon for actual service, the sum of ten pounds, and in default of such return and payment as aforesaid such Colonel or Officer commanding shall be required to complain of such neglect or refusal and to summon and try the party so offending and to decide and determine upon every such case by a Regimental Court in the same manner and form as is provided for the trial of other offenders against this Act.

1841.—4-5 Vic., Chap. 2.—That the persons called Quakers, Menonists or Tunkers shall not be compelled to serve in the Militia withtin that portion of this Province which formerly constituted the Province of Upper Canada but every person who shall profess to be one of the people called Quakers, Menonists or Tunkers and shall, if required, produce a certificate thereof signed by the Clerk, Pastor, Minister or Leader of the Meeting of the Society to which he shall belong, shall be excused and exempted from serving in said Militia. (Here follows provision for giving names, etc., to assessor and for the payment of ten shillings in times of peace and five pounds in times of invasion, etc., and providing for assessment as Quakers, Menonists or Tunkers. The money was apparently to be spent on roads.)

1846.—9 Vic., Chap. 28, Sec. 31.—(This Section was repealed by the following Act.)

1849.—12 Vic., Chap. 88.—Whereas it is expedient to repeal so much of the Act regulating the Militia of this Province as obliges Quakers, Menonists and Tunkers to enroll themselves in any Company Division in Upper Canada and to revive the Act herein mentioned relating to the payment to be made by such persons in lieu of serving in the Militia; Be it therefore enacted . . . . . that the 31st Section of 9 Victoria, Chapter 28, and as much of the said Act as repeals the Act of 4 and 5 Victoria, Chapter 2, and so much of the said first-mentioned Act as may be inconsistent with or repugnant to this Act or to the Act secondly mentioned, shall be and are hereby repealed in so far as regards that portion of this Province which formerly constituted the Province of Upper Canada, and that the Act secondly mentioned shall be and is hereby revived and shall be reckoned in force and shall apply to the Militia Law now in force and to the Militia thereby organized and the things to be done under the same as fully and effectually as if the provisions thereof were herein repeated and re-enacted.

1855.—18 Vic., Chap. 77, Sec. 7.—All persons bearing certificates from the Society of Quakers, Menonists and Tunkers, or any inhabitant of this Province, of any religious denomination, otherwise subject to military

duty in time of peace but who from the doctrines of his religion shall be adverse to bearing arms, and shall refuse personal military service, shall be exempted therefrom. (Here follows a provision requiring an affidavit to be filed a month before exemption claimed.)

1859.—Being the consolidated Statutes of Upper Canada, Chapter 35, Section 73, repeats the law of 1855.

The Confederation of the Dominion of Canada having been formed in 1867 the Militia Act was revised as follows:

1868.—31 Vic., Chap. 40, Sec. 17.—Any person bearing a certificate from the Society of Quakers, Menonists or Tunkers or any inhabitant of Canada of any religious denomination, otherwise subject to military duty, but who, from the doctrines of his religion, is adverse to bearing arms and refuses personal military service, shall be exempt from such service when balloted in time of peace, or war, upon such conditions and under such regulations as the Governor-in-Council may from time to time prescribe. (Exemption to be claimed with affidavit as prescribed in the Act.) This clause wes repeated practically verbatim in 46 Vic. and Rev. Statutes of Canada, 1886, Chap. 1, Sec. 26.

STATUTES NOW IN FORCE.

The Militia Act.—Revised Statutes of Canada, 1906, Cap. 41, Sec. 10. All male inhabitants of Canada, of the age of eighteen and upwards and under sixty, not exempt or disqualified by law, and being British subjects, shall be liable to serve in the Militia; Provided that the Governor-General may require all the male inhabitants of Canada, capable of bearing arms, to service in the case of a levee en masse.

Sec. 11.—The following persons only shall be exempt from liability to service in the Militia:—(Amongst others) Persons who, from the doctrines of their religion, are averse to bearing arms or rendering personal military service, under such conditions as are prescribed.

Sec. 12, ss. 2.—No person shall be entitled to exemption unless he has, at least one month before he claims such exemption, filed with the Commanding Officer within the limits whereof he resides, his affidavit, made before some Justice of the Peace of the facts on which he rests his claim.

Sec. 69.—The Governor-in-Council may place the Militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency.

THE MILITARY SERVICE ACT, 1917.

Among the grounds of exemption allowed is:

Sec. 11, ss. (f)—That he conscientiously objects to the undertaking of combatant service and is prohibited from so doing by the tenets and articles of faith, in effect on the 6th day of July, 1917, of any organized religious denomination existing and well organized in Canada at such date, and to which he in good faith belongs;

and if any of the grounds of such application be established, a certificate of exemption shall be granted to such man.

(2) (a) A certificate may be conditional as to the time or otherwise, and, if granted solely on conscientious grounds, shall state that such exemption is from combatant service only.

To this Military Service Act, 1917, a schedule of exceptions is attached, among which is: 7. Those persons exempted from Military Service by Order-in-Council of December 6th, 1898. Mennonites might possibly come under Exception 7 but I could not find any copy of these Orders-in-Council or any reference to them except in this Act in the library at Osgoode Hall, not being published in the Canada Gazette around the dates mentioned.

MEMORANDUM OF EXTRACTS FROM DOMINION GOVERNMENT RECORDS

which appear to relate to Section 7 of the Military Service Act 1917.

1868—That a sub-section of Section 17 of the Act, 31 Victoria, Chapter 40, is as follows: Any person bearing a Certificate from the Society of Quakers, Mennonites or Tunkers, or any inhabitant of Canada of any religious denomination, otherwise subject to military duty, but who, from the doctrines of his religion, is averse to bearing arms and refuses personal military service shall be exempt from such service when balloted in time of peace, or war, upon such conditions

and under such regulations as the Governor-in-Council may from time to time prescribe. That under this Section all the persons above mentioned, and the Mennonites are expressly included, are absolutely free and exempted by the law of Canada from military duty or service, either in time of peace or war. That the intention of the Act in conferring upon the Governor-General-in-Council the power of making conditions and regulations was to enable the Government to provide, if necessary, for the registration of the exempted persons in such a manner as to prevent persons belonging to any other denomination than thase specified in the section of the Act above quoted from avoiding military duty under false prtences. That the constitution does not confer upon the Governor-General-in-Council any power to over-ride or set aside, under any circumstances, the plain meaning of Statute law, and he recommends that this explanation be conveyed to the Mennonites in Russia.

The Committee concur in the foregoing report, and advise that a copy of this minute be transmitted by Your Excellency to the Earl of Kimberly.

(Signed) John J. McGee, Clerk, Privy Council.

To the Honourable The Minister of the Interior.

Department of Agriculture,
Immigration Branch,
Ottawa, July 23, 1873.

Gentlemen:

I have the honorur under the instructions of the Hon. The Minister of Agriculture, to state to you in reply to your letter of this day's date the folowing facts relating to advantages offered to settlers and to the immunities to Mennonites, which are established by the Statute Law of Canada and by orders of His Excellency the Governor-General-in-Council, for the information of German Mennonites having intention to emigrate to Canada via Hamburg.

An entire exemption from military service is by law and Order-in-Council granted to the denomination of Christians called Mennonites.

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